

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FREDERICK BANKS,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-14-1163-F
)	
RICH FITZGERALD, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Frederick Banks (Plaintiff/Petitioner), who names the Allegheny County Jail, Pittsburgh, Pennsylvania as his current place of incarceration, has filed what he consecutively numbers as one document comprising a separately signed and labeled (1) “Complaint and a Complaint for a Writ of Mandamus” and (2) “Complaint and Petition for a Writ of Habeas Corpus and Mandamus (continued).” Doc. 1, at 1-4, 5-6; Doc. 3.¹ He seeks both damages and habeas relief. His claims have no apparent connection to the Western District of Oklahoma.

I. Analysis.

A. Plaintiff/Petitioner’s claims.

Plaintiff/Petitioner names numerous individuals including his current

¹ Nonetheless, the court’s CMECF docket report shows pages 5-6 of the document as an “attachment.”

custodian, federal judges, federal officials, and President Obama. Doc. 1, at 1. He claims violations of his constitutional rights and refers to his American Indian heritage; his federal conviction for white collar offenses; CIA surveillance employing towers disguised as cactus, trees, and stop lights; his release in 2013; “a bogus supervised release violation”; and microwave transmissions causing “spoken words inside his head” *Id.* at 2. He requests damages for the unwarranted surveillance. *Id.* at 4. He seeks habeas relief pursuant to 28 U.S.C. § 2241, complaining of a wrongful failure to be released from confinement on October 20, 2014. *Id.* at 5-6. He requests monetary relief, release on bail, and transfer to a facility in Ohio. *Id.* at 6.

B. Findings on screening.

1. Claims for damages.

“The court shall review . . . as soon as practicable after docketing, a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity” and “shall . . . dismiss the complaint, or any portion of the complaint, if the complaint . . . is frivolous . . . or fails to state a claim upon which relief may be granted” 28 U.S.C. § 1915A(a),(b)(1).

A claim is frivolous if it lacks an arguable legal basis or contains fanciful factual allegations. *Hall v. Bellmon*, 935 F.2d 1106, 1108 (10th Cir. 1991) (citing

Neitzke v. Williams, 490 U.S. 319, 325 (1989)). “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Plaintiff/Petitioner’s claims of constitutional violations are delusional and dismissal is recommended.

2. Request for habeas relief.

“A petition under 28 U.S.C. § 2241 attacks the execution of a sentence rather than its validity and must be filed in the district where the prisoner is confined.” *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996); *see Montero v. Bush*, 107 F. App’x 180, 181 (10th Cir. 2004) (concluding that district court’s dismissal of federal prisoner’s § 2241 petition was proper where prisoner was “not incarcerated” in the district). Here, Plaintiff/Petitioner declares that he is confined in Pennsylvania. Doc. 1, at 4, 6; Doc. 3.

II. Recommendation and notice of right to object.

For the reasons stated, the undersigned recommends that Plaintiff/Petitioner’s claims be summarily dismissed without prejudice to refiling and that his motion for in forma pauperis status, Doc. 2, be deemed moot.

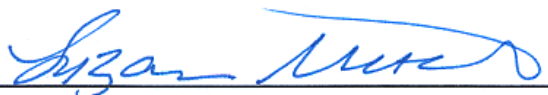
The undersigned advises Plaintiff/Petitioner of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before November 24, 2014, in accordance with 28 U.S.C. § 636 and Fed. R. Civ.

P. 72. The undersigned further advises Plaintiff/Petitioner that failure to file a timely objection to this Report and Recommendation waives his right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The Clerk of Court is directed to transmit a copy of this Report and Recommendation through electronic mail to the U.S. Attorneys Office at the following address: Kay.Sewell@usdoj.gov.

This Report and Recommendation disposes of all the issues referred to the undersigned Magistrate Judge in the captioned matter.

IT IS SO ORDERED this 4th day of November, 2014.



SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE